Previous references.

~~Serial No 8 of~~
File No 131 of 1903-04.
~~Sl. No 1-9 B~~
~~Sl. No 12-13~~ 1904.

File No. 131 of 1903-04.

(III - Courts.)

Later references.

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 12 and 13.

PART B FOR July 1904.

SUBJECT.

Appeal to Chief Court preferred by Govt against Mysore Sessions Judge's order acquitting Vasudevayya and others, accused in ~~Case~~ Sessions Case No 2 of 1903-04

	FILE No. 131 OF 1903-04.	
	Appeal to Chief Court against order of acquittal passed in Mysore Sessions case 206 of 1903-04, Government vs. Vasudevayya and others.	
12	From the Government Advocate, No. 228, dated 15th June 1904. Forwards for the information of Government, copy of the Chief Court's Judgment dismissing the Appeal No. 131 of 1903-04 (Government of Mysore *versus* Vasudevayya and 6 others). [With enclosure.]	Sl. No. 8 of File 131 of 1903-04.
13	To the Government Advocate, No. 178, dated 23rd July 1904. Records the above.	

File No 137.

Sl No 12.

Draft issued -
Letter No 228, dt/ 15th June 1904 from Govt Advocate

The Govt Advocate has now forwarded a copy of the judgment of the Chief Court ~~in the~~ dismissing the appeal preferred by Govt in the case referred to

Draft recording the Govt Advocates letter is submitted.

Rk
20/6/04

(Please see para 5 of the Instr: which admits the existence of many unfavourable circumstances against the accused)

Draft for approval

To Secretary to Govt (V)

20/6/04

1679
22-6-04
Despatched

Seen. The result is unfortunate — Q
22/6/04.

18564
23.6.04

Sl No 13. Order issued. No 178, dated 23rd July 1904. Forwarding the above letter.

Tn/Dec: 1/16

J 1878.

No 228.

Rev. Dept 1

(1)

Office of the Government Advocate
in Mysore
Bangalore 25th June 1904

From

The Government Advocate
in Mysore

To

The Secretary to the
Government of Mysore
Revenue Genl Dept

Sir,

With reference to the Proceedings of the Government Order No 1300-2, dated the 23rd November 1903, I have the honor to forward for information a copy of Judgment passed in Criminal Appeal No 131 of 1903/4 by the Chief Court of Mysore (Government of Mysore Vs Vasudevaiah and 6 others)

I have the honor to be
Sir,
Your most obedient servant.

S Ramiah
Government Advocate

In the Chief Court of Mysore
at Bangalore.

Tuesday the 29th day of March 1904.

present

Mr Justice A. Rangaswamy Iyengar
Judge.

and

Mr Justice H. V. Nanjundiah Judge.

Criminal Appeal No: 131 of 1903-04.

Government of Mysore (By Mr S. Ramasamy Aiyar Govt Advocate) — Appellant.

~~Ats~~

1. Vasudeviah.
2. Nanjappa.
3. Madegowda.
4. Mauttiah.
5. Kencha Imadiah.
6. Mallappa.
7. Rachiah.

— Respondents (accused)

Appeal against the order of acquittal by the Sessions Judge of Mysore in Mysore Sessions Case No: 2 of 1903-04.

This appeal coming on for

3)

for hearing on Saturday the 26th March 1904, the Court delivered the following Judgment:-

The accused persons in this Case were tried by the Sessions Judge of Mysore Division on a charge of having fabricated a will, purporting to be that of one Mallēdia Lingiah and of his wife Deviru, who died of plague, soon after the date of the document, in their place. (Gangavadi-Chamarajnagar Taluq.) The will is to the effect that the property of the executants thereof (Mallēdia Lingiah and Deviru) who are described as husband and wife, should after their death, be enjoyed by Chikka Mallappa (described as the son of Mallēdiah's brother Malliah) who, as the foster or adopted son of the testators, should perform their funeral ceremonies.

The -

The 2nd accused is the writer of the will, the 7th, the person who presented it for registration on behalf of the minor Mallappa, and the others the attesting witnesses thereof, who also appeared before the Sub Registrar to prove its execution. The will purports to have been executed on the 15th of September 1902, and was presented for registration on the 3rd of November after the death of both the testators.

2. The attesting witnesses of the document, and the person who is interested in the property dealt with in it, have all been arraigned as the accused - one attesting witness only Madaiya (the 3rd) being left out. This man was examined in the Magistrate's Court for the prosecution, and as might be expected, supported the accused. Very little weight, however, can be attached to his testimony, and it is difficult in the circumstances of this

this Case to expect much of direct evidence on either side. The 7th and 8th witnesses for the prosecution say that they were asked to attest a document disposing of the property of Mauledeya and Devini in favor of the 4th accused, and that they declined on the express ground of the two persons having been dead. The Sessions Judge has rightly disbelieved this evidence. It is most unlikely that persons who conspired and wrote a false document would call in casual strangers, not already in the conspiracy to attest it. There were enough of witnesses among themselves, and it is not explained why they should have been driven to this course.

3. The Case should thus be decided wholly on circumstantial evidence. The Relationship of Mauleda Lupiah and Devini given

2 given in the will is said to be false.
Devini is alleged by the prosecution to
have been the wife of the 1st witness
Eriah, and Kandiala Linjiah the
husband of the 2nd witness Nanji.
The Sessions Judge has devoted a large
part of his judgment to this question,
and we agree with the Conclusion
he has arrived at, as being Correct
in the main. Notwithstanding the
entries in some of the village accounts
it is impossible to believe that Devini
was Eriah's wife in the face of his
deposition in O.S. 532 of 1881 in the
Mysore Munsiff's Court, and her own
description of herself in O.S. 359 of 1885
in Nanjangood Munsiff's Court. The
account given by the accused about
her seems to be nearer the truth, that
she was kept first by Eriah and
then by the deceased Linjiah as a
mistress, either with or without any idea
of a 'Kudiki' alliance. It is not-

a

a far fetched assumption to make that, after living for a number of years together, they passed as husband and wife with the neighbours, and perhaps styled themselves such.

4. On the other matter also, the Sessions Judge seems to be right, when he holds that Nanji was not living with M. Lingiah and had long forsaken him. The fact that the papers belonging to the deceased were produced by these two witnesses is relied on as showing that the relationship set up by the prosecution is true. But we think that this can be accounted for in other ways; such as that Mantoda Lingiah and Devsi both lived in the house of Witness Basaniah who is on the side of the prosecution.

5. The mere existence of incorrect

(10

this case, the prosecution has to make out that the document is a fabricated one, not only probably, but that the other conclusion is altogether impossible and unreasonable. We therefore direct that this appeal be dismissed.

(Sd) A. Ramanathan Acting J.

(Sd) H. C. Ramanadhan.

Judges.

Copy.

S. Ramanathan

Government Advocate.